

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
October 11, 2010

Court Holiday

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
October 12, 2010

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and  
The Honorable Associate Justices Alex McDonald and Terry O'Rourke  
Clerk: D. Moore

**D054677     Gonzalez et al. v. Southern California Gas Company**  
Cause called on merits. John Taylor, Esq. argued for appellant.  
Lann G. McIntyre, Esq. argued for respondent. Mr. Taylor replied.  
Cause submitted.

**D055300     Rocha v. VU**  
Cause called on merits. Scott A. McMillan, Esq. argued for appellant.  
Lisa Renee Brant, Esq. argued for respondent. Mr. McMillan replied.  
Cause submitted.

**D056713     Stanton v. Stanton**  
Cause called on merits. Solomon Robert Stanton argued for appellant in pro per.  
Andy Cook, Esq. argued for respondent, Carol Stanton. Mary K. Dahlberg, Esq.  
argued for respondent, Dept. of Child Support Services. Mr. Stanton replied.  
Cause submitted.

Court recessed at 10:12 a.m. to change panel members.

New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and  
The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

**D054980     People v. Saibu et al.**  
Cause called on merits. Rebecca P. Jones, Esq. argued for appellant, Saibu.  
Diane Nichols, Esq. argued for appellant, Valentino. Anthony DaSilva, Deputy  
Attorney General, argued for respondent. Ms. Jones replied. Cause submitted.

Court recessed at 10:48 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and  
The Honorable Associate Justices Patricia Benke and Cynthia Aaron  
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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October 12, 2010 (Continued)

**D055057 People v. Thornton**

Cause called on merits. Carl Fabian, Esq. argued for appellant. Claire Author, Certified Law Student, argued for respondent. Mr. Fabian replied.

**D055161 People v. Springfield**

Cause called on merits. Cynthia Diane Jones, Esq. argued for appellant. Karl Thomsen Terp, Deputy Attorney General, argued for respondent. Ms. Jones replied. Cause submitted.

**D055136 People v. Harvey**

Cause called on merits. Benjamin B. Kington, Esq. argued for appellant. Donald William Ostertag, Deputy Attorney General, argued for respondent. Mr. Kington replied. Cause submitted.

Court recessed at 2:23 p.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and  
The Honorable Associate Justices Alex McDonald and Cynthia Aaron.

**D056355 Kahn v. Humphries et al.**

Cause called on merits. Lawrence Wasserman, Esq. argued for appellant. Amy Elizabeth West, Esq. argued for respondent. Cause submitted.

**D054810 P&D Consultant, Inc. v. City of Carlsbad**

Cause called on merits. Anthony T. Ditty, Esq. argued for appellant. David A. Niddrie, Esq. argued for respondent. Michael Warren Vivoli, Esq. argued for respondent. Mr. Ditty replied. Cause submitted.

Court recessed at 3:15 p.m. until Wednesday, October 13, 2010 at 9:00 a.m.

**D056934 Bank of the West v. Ashurst Land & Cattle et al.**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

**D057516 In re Rosier on Habeas Corpus**

Appellant Rosier's motion to augment the record on appeal is denied. The appeal is dismissed because only the prosecution has standing to appeal an order granting habeas corpus relief (Pen. Code, § 1506).

**D058160 In re Close on Habeas Corpus**

The petition is denied.

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**D058042     In re Levao on Habeas Corpus**  
The petition is denied.

**D058257     In re Felix on Habeas Corpus**  
The petition is denied.

**D058102     Sara N. et al. v. Superior Court of San Diego County/S.D. County Health & Human Services Agency**  
The attorneys for petitioners Sara N. and Craig W. have notified the court that petitions for writs of mandate under California Rules of Court, rule 8.452 will not be filed as there are no viable issues for writ review. The attorneys' requests, on behalf of petitioners, for extensions of time to file petitions are denied. The case is dismissed.

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**D057321     In re Marriage of Burrell**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

**D057404     Davis v. Stewart**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

**D057743     People v. Johnson**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

**D057425     Beaman v. AVL Animal Hospital, Inc.**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D055470     Agosto v. Board of Trustees of the Grossmont-Cuyamaca Community College District**

The petition for rehearing is denied.

**D058288     Mateer v. Superior Court of San Bernardino County/The People**

The petition is denied.

**D054496     Kelman et al. v. Kramer**

The opinion filed September 14, 2010, is ordered modified (no change in judgment). The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present:     The Honorable Patricia Benke, Acting Presiding Justice, and  
                 The Honorable Associate Justices Gilbert Nares and Judith Haller

Clerk:        D. Moore

**D056266     Sturgeon v. County of Los Angeles et al.**

Cause called on merits. Sterling Ernie Norris, Esq. argued for appellant.  
Elwood Lui, Esq. argued for respondent, Molina and etc.  
Theodore J. Boutrous, Jr., Esq. argued for respondent, Superior Court.  
Mr. Norris replied. Cause submitted.

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Court recessed at 9:41 a.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and  
The Honorable Associate Justices Judith Haller and Alex McDonald

**D056333     Pointe San Diego Residential Community, LP et al. v. Weingarten**  
Cause called on merits. Charles A. Bird, Esq. argued for appellant.  
Barbara W. Ravitz, Esq. argued for respondent. Mr. Bird replied. Cause submitted.

Court recessed at 10:17 a.m. until 2:00 p.m.

Court reconvened at 2:00 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and  
The Honorable Associate Justices Gilbert Nares and Judith Haller  
Clerk: D. Moore

**D056266     Sevidal v. Target Corporation**  
Cause called on merits. Matthew Bartley Butler, Esq. argued for appellant.  
David Frank McDowell, Esq. argued for respondent. Mr. Bartley replied.  
Cause submitted.

**D055401     Jentz v. City of Chula Vista et al.**  
Cause called on merits. Michael George Colantuono, Esq. argued for appellant.  
Mark J. Dillon, Esq. argued for respondent. Mr. Colantuono replied.  
Cause submitted.

**D055313     Weiser v. Brown**  
Cause called on merits. Kathryn E. M. Brown, Esq. argued for appellant.  
A. David Mongan, Esq. argued for respondent. Ms. Brown replied.  
Cause submitted.

Court recessed at 3:08 p.m. until Thursday, October 14, 2010 at 9:00 a.m.

**D055390     Cochran v. El Cajon Motors**  
The request for publication of the opinion filed September 21, 2010, is denied.

**D058222     In re White on Habeas Corpus**  
The petition is denied.

**D058252     In re Johnson on Habeas Corpus**  
The petition is denied.

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**D058221    In re White on Habeas Corpus**  
The petition is denied.

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**D057644     Plaza Camino Real v. City of Oceanside et al.**  
The court accepts the notice of settlement filed by appellant on October 12, 2010. (Cal. Rules of Court, rule 8.244; all rule references are to the California Rules of Court.) Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D057862     In re Angulo on Habeas Corpus**  
The petition is denied.

**D057906     In re Melanson on Habeas Corpus**  
The petition is denied.

Court convened at 9:00 a.m.

Present:     The Honorable Terry O'Rourke, Acting Presiding Justice, and  
                 The Honorable Associate Justice Cynthia Aaron  
Clerk:        D. Moore

**D055706     Sommer v. Hawkes**  
Cause called on merits. Ervin Sommer argued for appellant in pro per. Gregory Y. Lievers, Esq. argued for respondent. Mr. Sommer replied. Cause to be submitted at a later date.

**D056578     Levine et al. v. Blue Shield of California**  
Cause called on merits. Michael L. Levine, Esq. argued for appellant. Brad William Seiling, Esq. argued for respondent. Mr. Levine replied. Cause to be submitted at a later date.

Court recessed at 9:55 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present:     The Honorable Alex McDonald, Acting Presiding Justice, and  
                 The Honorable Associate Justice Cynthia Aaron  
Clerk:        D. Moore

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**D055852     Kovacevic v. Avalon at Eagles' Crossing Homeowner Association et al.**  
Cause called on merits. Carmen Kovacevic argued telephonically for appellant in pro per. Alan E. Greenberg, Esq. argued for respondent. Jonathan P. Green, Esq. argued for respondent. Ms. Kovacevic replied. Cause to be submitted at a later date.

Court recessed at 2:06 p.m. to change panel members.

New panel members:    The Honorable Alex McDonald, Acting Presiding Justice, and  
                                    The Honorable Associate Justice Terry O'Rourke

**D055292     Shannahan v. Shannahan**

**D053701     Shannahan v. Shannahan**

Cause called on merits. John Morris, Esq. argued for appellant. Stephen Temko, Esq. argued for respondent. Mr. Morris replied. Cause to be submitted at a later date.

Court adjourned at 2:37 p.m.

**D055029     Ghiotto et al. v. City of San Diego et al.**

The judgment is affirmed. This action is remanded to the trial court to exercise its discretion as to the amount of appellate attorney fees to award to the Firefighters. In the interest of justice, the parties are to bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).) Irion, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D057388     Lemon Grove Holdings, LLC v. Thrifty Corporation et al.**

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D056696     In re A.N., a Juvenile**

The petition for rehearing is denied.

**D057520     Washington v. Horvath**

Pursuant to California Rules of Court, rule 8.140, the appeal filed May 27, 2010, is dismissed for appellant's failure to timely designate the record with specificity (Cal. Rules of Court, rule 8.121(a)).

**D058039     Flores v. Deluca et al.**

Pursuant to California Rules of Court, rule 8.140, the appeal filed May 27, 2010, is dismissed for appellant's failure to timely designate the record. (Cal. Rules of Court, rule 8.121(a)).

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**D058159 C.G. v. Superior Court of San Diego County/S.D. County Health & Human Services Agency**

The attorney for petitioner has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 will not be filed as there are no viable issues for writ review. The attorney's request, on behalf of petitioner, for an extension of time to file the petition is denied. The case is dismissed.

**D058147 M.R. v. Superior Court of San Diego County/S.D. County Health & Human Services Agency**

The attorney for petitioner has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 will not be filed as there are no viable issues for writ review. The attorney's request, on behalf of petitioner, for an extension of time to file the petition is denied. The case is dismissed.

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- D056556     Rohr, Inc. v. Franchise Tax Board**  
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.
- D055755     Rohr, Inc. v. Franchise Tax Board**  
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.
- D055603     In re J.J., a Juvenile**  
The judgment is affirmed as modified.  
McIntyre, J.; We Concur: Benke, Acting P.J., McDonald, J.
- D056781     In re Blair on Habeas Corpus**  
The petition is dismissed as moot.  
McIntyre, J.; We Concur: McDonald, Acting P.J., Aaron, J.
- D055580     People v. Henderson**  
The judgment is affirmed.  
McIntyre, J.; We Concur: Haller, Acting P.J., O'Rourke, J.
- D058294     Ryan et al. v. Superior Court of San Diego County/Cihak**  
The petition is denied.
- D058058     In re Bowling on Habeas Corpus**  
The petition is denied.
- D058246     In re Bronson on Habeas Corpus**  
The petition for writ of habeas corpus *In re William Bronson*, No. D058246, will be considered at the same time as the pending appeal *People v. Bronson*, No. D056724.
- D057915     Kjeldergaard v. Superior Court of San Diego County/People**  
The petition is denied.

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October 15, 2010 (Continued)

**D058335    In re Lansang on Habeas Corpus**

The petition for writ of habeas corpus and request for stay have been read and considered by Justices Haller, McDonald and Aaron.

In this petition, Ricardo Lansang asserts the trial court improperly failed to rule on his application for bail on appeal, and the motion should be remanded to the trial court for ruling.

The petition is denied. Lansang has not included copies of reasonably available supporting evidence, including the exhibits lodged in support of his application for bail or other relevant material such as the probation report and transcripts from the change of plea hearing and hearing on the motion to withdraw plea. (People v. Duvall (1995) 9 Cal.4th 464, 474-475.)

Moreover, contrary to Lansang's argument that the lack of a ruling on his application suggests that the trial court left the issue to this court, the transcript of the September 30 hearing makes it appear more likely that the court either forgot about the pending application for bail on appeal in the face of the other matters before it, or became confused as to whether the application had been withdrawn with the withdrawal of the motion for continuance. Notably, Lansang has not explained why he did not directly ask the trial court for a ruling or argue that the trial court was required to hear the application and articulate reasons.

The petition is denied without prejudice to Lansang's renewing his application or filing a new application for bail on appeal in the superior court.

**D058187    In re Tapia on Habeas Corpus**

The petition is denied.